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Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHYRIAA HENDERSON, on behalf
of herself and all others similarly
situated,

Plaintiff,

vs.

UNITED STUDENT AID FUNDS,
INC. D/B/A USA FUNDS,

Defendant.

CASE NO. 3:13-cv-1845-JLS-BLM
CLASS ACTION

**PLAINTIFF'S UNOPPOSED *EX*
PARTE APPLICATION IN
SUPPORT OF MOTION TO FILE
DOCUMENTS UNDER SEAL**

1 Plaintiff Shyriaa Henderson hereby moves this Court, pursuant to Local Civil
2 Rule 79.2, the ECF Administrative Policies and Procedures Section, II.j to allow
3 Plaintiff's counsel to file under seal portions of Plaintiff's Brief in Opposition to
4 Defendant's Motion for Summary Judgment ("Plaintiff's Opposition Brief") and
5 portions of Plaintiff's Response to Defendant's Statement of Material Facts and
6 Additional Statement of Material Facts in Opposition to Motion of Summary
7 Judgment ("Plaintiff's Response to Statement of Facts"). Both of these documents
8 directly quote and cite to documents designated as confidential and filed under seal
9 by Defendant in its moving papers.

10 Prior to making this *ex parte* motion, Plaintiff's counsel and Defendant's
11 counsel telephonically met and conferred and Plaintiff advised she would file
12 Plaintiff's Opposition Brief and Plaintiff's Response to Statement of Facts under
13 seal because both documents directly quote and cite agreements which Defendant
14 filed under seal in support of its moving papers. Defendant agreed that filing these
15 items under seal was advisable because they are confidential business documents
16 and have been designed as confidential by Defendant and other non-parties. Plaintiff
17 also advised that she would be filing public, redacted versions of both documents.

18 **I. LEGAL STANDARD**

19 It is well established that there is a "general right to inspect and copy public
20 records and documents, including judicial records and documents." *Nixon v. Warner*
21 *Comm'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). However, "access to judicial
22 records is not absolute." *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,
23 1178 (9th Cir. 2006). The Ninth Circuit has explained:

24 The common law right of access, however, is not absolute and can be
25 overridden given sufficiently compelling reasons for doing so. In
26 making the determination, courts should consider all relevant factors,
27 including: the public interest in understanding the judicial process
28 and whether disclosure of the material could result in improper use of

1 the material for scandalous or libelous purposes or infringement upon
2 trade secrets

3 *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). Courts
4 apply the “compelling reasons” standard when determining whether documents in
5 support of a dispositive motion should be filed under seal. *See Kamakana*, 477 F.3d
6 at 1178. However, for non-dispositive motions, the courts apply the “good cause”
7 standard that is applicable to Federal Rule of Civil Procedure 26(c). *Id.* at 1180.
8 “What constitutes a “compelling reason” is “best left to the sound discretion of the
9 trial court.” *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th
10 Cir.), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38
11 (2016) (citing *Nixon*, 435 U.S. at 599). “Examples include when a court record
12 might be used to ‘gratify private spite or promote public scandal,’ to circulate
13 ‘libelous’ statements, or ‘as sources of business information that might harm a
14 litigant's competitive standing.’” *Id.* at 598–99.

15 **II.COMPELLING REASON AND GOOD CAUSE EXISTS FOR SEALING**
16 **PORTIONS OF PLAINTIFF’S OPPOSITION BRIEF AND**
17 **PLAINTIFF’S RESPONSE TO STATEMENT OF FACTS**

18 Defendant submitted, under seal, two confidential business agreements in
19 support of its Motion for Summary Judgment: the Fifth Restated and Amended
20 Guarantee Services Agreement for United Student Aid Funds, Inc. and the
21 Agreement for the Collection of Defaulted Private Loan Accounts. Both of these
22 agreements contain commercially sensitive, confidential and proprietary business
23 information regarding Defendant’s relationship with Navient Solutions, Inc. and the
24 collection vendors. These documents have also been designated as “Confidential”
25 pursuant to the Protective Order entered in this case. Moreover, on October 12,
26 2016, this Court granted Defendant’s unopposed motion to file documents under seal
27 as it relates to these two documents. (ECF No. 18.)
28

1 In order for Plaintiff to fully respond to Defendant's Motion for Summary
2 Judgment and Defendant's Statement of Facts, Plaintiff must directly quote and cite
3 to these sealed documents. Accordingly, because Plaintiff's Opposition Brief and
4 Plaintiff's Response to Statement of Facts cites to the confidential language of these
5 documents, Plaintiff maintains that a compelling reason exists to allow Plaintiff to
6 file her Opposition Brief and Response to Statement of Facts under seal. Plaintiff
7 will additionally file public, redacted versions of her Opposition Brief and Response
8 to Statement of Facts.

9 **III.CONCLUSION**

10 For the reasons discussed above, Plaintiff respectfully requests the Court grant
11 this Motion to File Under Seal to allow Plaintiff leave to file Plaintiff's Opposition
12 Brief and Plaintiff's Response to Statement of Facts under seal.

13
14 Date: November 30, 2016

SHYRIAA HENDERSON, individually and on
behalf of all others similarly situated,

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16 By: s/ Kas L. Gallucci

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